

**CIVIL SERVICE COMMISSION MINUTES**  
**MARCH 5, 2008**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

Present were:

Francesca Krauel  
W. Dale Bailey  
A.Y. Casillas  
Barry I. Newman

Absent was:

Cheryl Fisher

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer  
William D. Smith, Senior Deputy County Counsel

Selinda Hurtado-Miller, Reporting

**Approved**  
**Civil Service Commission**

**April 2, 2008**

COUNTY OF SAN DIEGO  
CIVIL SERVICE COMMISSION MINUTES  
MARCH 5, 2008

2:00 P.M.            CLOSED SESSION: Discussion of Personnel Matters  
and Pending Litigation

2:30 p.m.            OPEN SESSION: Room 358, 1600 Pacific Highway, San  
Diego, California

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<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
3,5,6,7,8,9,10,11,12,19	12	4	20

COMMENTS: Motion by Newman to approve all items not held for  
discussion; seconded by Casillas. Carried.

**CLOSED SESSION AGENDA**  
County Administration Center, Room 400B  
(Notice pursuant to Government Code Sec. 54954.2)  
Members of the public may be present at this  
location to hear the announcement of the  
closed session agenda.

A. Commissioner Krauel: CONSIDERATION OF PUBLIC  
EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Julie  
Buechler, Esq., on behalf of **2007-15**, appealing an  
Order from the Sheriff's Department.

B. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED  
LITIGATION (54956.9(b)(3)(E)) One potential case.

**OPEN SESSION AGENDA**  
County Administration Center, Room 358

**MINUTES**

1. Approval of the Minutes of the regular meeting of February  
6, 2008.

**Approved.**

## CONFIRMATION OF ASSIGNMENT

2. Commissioner Bailey: Tasha Iglesias, Worksite Organizer, SEIU Local 221, on behalf of **2008-05**, appealing an Order of Suspension and Charges from the Probation Department.

**Confirmed.**

## DISCIPLINE

### Findings

3. Commissioner Krauel: Julie Buechler, Esq., on behalf of **2007-15**, appealing an Order of Termination and Charges from the Sheriff's Department.

### FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of 2007-15, "Employee" hereinafter, from a written Order of Termination and Charges terminating Employee from the class and position of Deputy Sheriff (Class No. 5746) in the Sheriff's Department, "Department" hereinafter, was presented to the Civil Service Commission. The matter was duly noticed and came on for hearing on January 29, 2008.

The official file of the proceeding showed the Order of Termination and Charges, dated September 4, 2007, signed by William B. Kolender, Sheriff, and showed the causes of discipline to be:

### CAUSE I

You are guilty of failure of good behavior, as set forth under Section 7.2 (r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.6 - Conformance to Law, Section 2.11 - Use of Drugs**

### CAUSE II

You are guilty of conduct unbecoming an officer of the County of San Diego as set forth under Section 7.2 (m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.4 - Unbecoming Conduct**

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### CAUSE III

You are guilty of dishonesty as set forth under Section 7.2 (d) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.46 - Truthfulness**

### CAUSE IV

You are guilty of acts, which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is that set forth under Causes I through III above.

Employee was a patrol Deputy Sheriff and, concurrently, was a Navy reservist. During random drug testing conducted by the Navy, Employee tested positive for controlled substances. The Department learned of the positive test results through an anonymous tip. Employee was contacted by Department Internal Affairs Officers, who asked Employee to submit to the Department's own drug tests. Employee refused and asked for representation. Employee subsequently obtained drug tests which purportedly gave a negative result for the same controlled substances and time period. The Department charged that Employee used controlled substances, admitted such use to its Internal Affairs Officers, and that the subsequent denial of the admission was dishonest. Thereupon, the Department terminated Employee who appealed the termination. Employee denied using controlled substances, denied admitting such use, and argued that Employee's own test results, and corroborating circumstantial evidence, demonstrated Employee's innocence. At the Commission hearing, the Department sustained its burden of proving its case by a preponderance of the evidence. The positive Navy drug test results were supported with testimony which facilitated a high degree of confidence in their results. Employee presented documentation of contrary test results, but offered no competent testimony or other evidence explaining their level of reliability or reconciling the different test results. Additionally, Employee merely hinted at alternative reasons for the positive test results, such as dietary aids and flu medications that Employee was taking at the time, but Employee provided no evidence that these items could cause

the positive test results. The subjective and anecdotal testimony of Employee's witnesses was inadequate to controvert the Department's objective forensic evidence. Accordingly, it is recommended that the Commission affirm the Order of Termination.

Based on the findings and conclusions set forth above, I hereby recommend the following decision: that the Order of Termination be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Krauel to approve Findings and Recommendations; seconded by Casillas; carried.**

## **DISCRIMINATION**

### **Complaints**

4. **Sheryl Gee, Psy.D.**, former Senior Human Resources Analyst, alleging retaliation and racial discrimination by the Department of Human Resources.

RECOMMENDATION: Assign Commissioner Casillas as Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved.**

### **Findings**

5. Commissioner Newman: **Mario Perez**, applicant, alleging disability discrimination by the Department of Human Resources. (See Item No. 6 below.)

## **FINDINGS AND RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission (Commission) on September 5, 2007, the Commission appointed Barry I. Newman to investigate the complaint submitted by Mario Perez, which alleged disability discrimination by the Department of Human Resources. In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. Mr. Perez's complaint also included a Rule X (Selection Process) appeal, which has been held in abeyance pending the outcome of the discrimination investigation. The OIA concluded the investigation and has reported its findings to the Commission. This Investigating

Officer has taken into consideration all documentation submitted in this matter. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that the evidence does not support a finding of probable cause that a violation of discrimination laws occurred.

It is therefore recommended that Mr. Perez's Rule VI discrimination complaint be denied; that the Commission determine that a Rule X selection process hearing is not warranted; and that the Commission approve and file this report with the appended OIA Summary Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against.

**Motion by Newman to approve Findings and Recommendations; seconded by Casillas. Carried.**

## **SELECTION PROCESS**

### **Appeals**

6. **Mario Perez**, applicant, appealing the Department of Human Resources' determination that permanent limitations resulting from his pre-employment physical examination cannot be accommodated for the classification of Deputy Sheriff Cadet-Detentions/Court Services. (See Item No. 5 above.)

RECOMMENDATION: Take action consistent with the outcome of Mr. Perez's discrimination investigation.

**Denied. See Item No. 5 above.**

7. Julia Haus, Esq., on behalf of **Barton Sheela**, Deputy Alternate Public Defender IV, appealing his non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender. (Continued from the January 16<sup>th</sup> and February 6<sup>th</sup> meetings.)

RECOMMENDATION: Deny Request.

Julia Haus, Esq. stated that there is an appearance of unfairness in the promotional process from Deputy Alternate Public Defender IV to V. She stated that there seems to be an absence of guidelines regarding a procedure to follow regarding promotions within the Department. Ms. Haus is requesting a hearing on behalf of her clients, to ensure that the selection process was fair.

William Songer, Sr. Deputy County Counsel, stated that the process was fair. He explained that the employees who were promoted met the minimum qualifications and were chosen out of all the applicants to be DAPDs V. He further stated that it was a competitive process for very few positions, and was not a biased selection.

**Motion by Casillas to deny the request; seconded by Newman; carried.**

<b>AYES:</b>	<b>BAILEY, CASILLAS, NEWMAN</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>FISHER</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>
<b>NOT PARTICIPATING:</b>	<b>KRAUEL</b>

8. Julia Haus, Esq., on behalf of **Mary Ann Knockeart**, Deputy Alternate Public Defender IV, appealing her non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender. (Continued from the January 16<sup>th</sup> and February 6<sup>th</sup> meetings.)

RECOMMENDATION: Deny Request.

**Staff recommendation approved. See Item No. 7 above.**

9. Julia Haus, Esq., on behalf of **Steven Wadler**, Deputy Alternate Public Defender IV, appealing his non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender. (Continued from the January 16<sup>th</sup> and February 6<sup>th</sup> meetings.)

RECOMMENDATION: Deny Request.

**Staff recommendation approved. See Item No. 7 above.**

10. Julia Haus, Esq., on behalf of **Liesbeth van den Bosch**, Deputy Alternate Public Defender IV, appealing her non-selection for the classification of Deputy Alternate Public Defender V by the Office of the Alternate Public Defender. (Continued from the January 16<sup>th</sup> and February 6<sup>th</sup> meetings.)

RECOMMENDATION: Deny Request.

**Staff recommendation approved. See Item No. 7 above.**

11. Julia Haus, Esq., on behalf of **Dale Santee**, Deputy Alternate Public Defender IV, appealing his non-selection for the classification of Deputy Alternate Public Defender V by the

Office of the Alternate Public Defender. (Continued from the January 16<sup>th</sup> and February 6<sup>th</sup> meetings.)

RECOMMENDATION: Deny Request.

**Staff recommendation approved. See Item No. 7 above.**

12. **Marin Garrison**, Equipment Operator, appealing his non-selection for the classification of Senior Equipment Operator by the Department of Public Works (DPW).

RECOMMENDATION: Deny Request.

Senior Personnel Officer Laurie Szymanski, DPW, objected to Mr. Garrison's request for a continuance stating that Mr. Garrison has been disruptive to the department by attempting to pressure his co-workers to participate in his appeal. Ms. Szymanski questioned the legitimacy of Mr. Garrison's reason for requesting a continuance.

Commissioner Krauel stated that Mr. Garrison's behavior might be grounds for discipline, but that since there was no prejudice to the department and no reason to disbelieve Mr. Garrison, she moved that the continuance be granted and that Mr. Garrison be informed this was to be the only continuance in the matter.

Commissioner Newman stated that if the allegations of Mr. Garrison's behavior are proven, it is a misuse of his rights under the Civil Service Commission. He stated that there are serious disciplinary consequences to such behavior and should be communicated to Mr. Garrison by Commission staff.

**Motion by Krauel to continue this matter to the April 2, 2008 CSC meeting; seconded by Casillas; carried.**

13. **Dean Misiewicz**, appealing the Department of Human Resources' removal of his name from the employment lists for Deputy Sheriff Cadet, Deputy Sheriff Cadet-Detentions/Court Services and Correctional Deputy Probation Officer.

14. **Daniel Veerman**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

15. **Angie Salcido**, appealing the Department of Human Resources' removal of her name from the employment list for Correctional Deputy Probation Officer I.



16. **Raul Garcia**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

17. **Jesus Ynequez**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet-Detentions/Court Services.

18. **Ryan Beck**, appealing the Department of Human Resources' removal of his name from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify Item Nos. 13-18. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item Nos. 13-18 ratified.**

#### **OTHER MATTERS**

##### **Reconsideration**

19. Commissioner Newman reminded the Commission that this matter was raised prior to the last meeting as to whether or not this Commission had the power to reconsider its actions. He said the Commission had received advice from County Counsel which was legitimately described by one of the Commissioners as not being a comprehensive opinion. Based on support of that view, Commissioner Newman indicated that he would be asking for a formal opinion regarding the Commission's authority to reconsider a previous action. Since that time the Commission has received a communication from County Counsel stating that the Commission has the option to hire outside counsel to opine on the issue of reconsideration. Should the Commission desire County Counsel to opine on the matter, County Counsel is requesting the Commission to formally waive the perception/reality of a conflict of interest.

##### **Motion by Newman in 2 parts:**

- 1) **Civil Service Commission to seek from County Counsel an opinion describing the power and authority of the Commission to reconsider an action previously taken, both at the same meeting, and at an earlier meeting;**
- 2) **Formally waive any conflict concerns of County Counsel, representing both departments and the Commission. Further, to authorize County Counsel to issue a single opinion on this matter.**

**SUBSTITUTE MOTION by Commissioner Krauel:**

**Move to adopt policy or policies used by the Board of Supervisors for reconsideration. Seconded by Casillas;**

Discussion:

Commissioner Newman stated that in trying to adopt the Board of Supervisors' policy on reconsideration, it would compound the complexity of the matter. Senior Deputy County Counsel, William D. Smith, added that the Board of Supervisors can adopt its own rules, wherein the Civil Service Commission is limited. Mr. Smith added that County Counsel, John Sansone, has concerns that HR Director, Carlos Arauz, has also requested the same opinion from County Counsel.

Commissioner Krauel withdraws her substitute motion.

**Commissioner Casillas seconds the original motion presented by Commissioner Newman.**

**FRIENDLY AMENDMENT by Commissioner Krauel:**

**In support of original motion, alternatively she requests that the Commission outline the details on how County Counsel's opinion should be formulated.**

Commissioner Newman was unable to accept this as a friendly amendment. He suggested that should questions remain after County Counsel renders its opinion, the Commission can ask for additional points to be covered. He felt that the Commission should not be directing or restraining County Counsel.

**Commissioner Krauel withdraws Friendly Amendment.  
Requests that it be considered a Substitute Motion.  
Motion dies for lack of second.**

First Motion is now on the floor; discussion:

Commissioner Krauel suggests that the Commission utilize outside counsel due to the inherent conflict of interest. Commissioner Newman explained that he does not see this as an adversarial or partisan issue.

Call for vote on original motion:

<b>AYES:</b>	<b>BAILEY, CASILLAS, NEWMAN</b>
<b>NOES:</b>	<b>KRAUEL</b>
<b>ABSENT:</b>	<b>FISHER</b>
<b>ABSTENTIONS:</b>	<b>NONE</b>

**INFORMATION**

20. **Frank Campos**, Storekeeper II, Health and Human Services Agency, withdrawal of request for a classification review under Civil Service Rule XII. (Commissioner Bailey)

**Withdrawn.**

21. Public Input.

ADJOURNED: 3:40 p.m.

**NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION:**

**APRIL 2, 2008**